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RICHARD FRIEDMAN

12 UNITED STATES DISTRICT COURT

13 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

14 RICHARD FRIEDMAN, an individual,
15
16 Plaintiff,

17 vs.

18 HANS ZIMMER, individually, and doing
business as REMOTE CONTROL SONGS;
19 TWENTIETH CENTURY FOX FILM
CORPORATION; FOX SEARCHLIGHT
20 PICTURES, INC.; FOX
ENTERTAINMENT GROUP, INC.; NEW
21 REGENCY PRODUCTIONS, INC.;
MONARCHY ENTERPRISES, S.A.R.L.,
22 individually, and doing business as
REGENCY ENTERPRISES; RIVER ROAD
23 ENTERTAINMENT, LLC; PLAN B
ENTERTAINMENT, INC.; REMOTE
24 CONTROL PRODUCTIONS, INC.; SONY
MUSIC ENTERTAINMENT; IMAGEM
25 PRODUCTION MUSIC LLC, individually,
and doing business as 5 ALARM MUSIC
26 and also doing business as CYPRESS
CREEK MUSIC; DOES ONE through TEN,
inclusive,

27 Defendants.
28

Case No. 2:15-CV-00502 GHK €

**FIRST AMENDED
COMPLAINT FOR DAMAGES
AND INJUNCTIVE RELIEF
FOR: (1) COPYRIGHT
INFRINGEMENT; (2) UNFAIR
COMPETITION; LANHAM
ACT (15 U.S.C. §1121, 1125(a));
(3) VIOLATION OF MORAL
RIGHTS; (4) BREACH OF
TRUST/BREACH OF IMPLIED
OBLIGATION; AND
(5) BREACH OF IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

[DEMAND FOR JURY TRIAL]

1 Plaintiff Richard Friedman (“Plaintiff”) files this Complaint against the
 2 above-named defendants (“Defendants”) to secure damages and injunctive and
 3 declaratory relief, and demanding trial by jury, claims and alleges:

4 **I.**

5 **SUMMARY OF THE CASE**

6 1. This Complaint seeks legal and equitable relief against all Defendants,
 7 except Imagem Production Music, LLC (“Imagem”), for the first five claims for
 8 relief: copyright infringement, violation of moral rights, and unfair competition, *i.e.*,
 9 misrepresentation/false advertising under Section 43(a) of the Lanham Act, [15
 10 U.S.C. § 1125] arising out of their unauthorized use of Plaintiff’s copyrighted music
 11 in the soundtrack for the film, *12 Years a Slave* (hereinafter, “*12YAS*”). The sixth
 12 and seventh claims, seeking damages and equitable relief, allege breach of the
 13 implied obligation and breach of implied covenant of good faith and fair dealing.
 14 The breach of implied covenant of good faith and fair dealing relate to Imagem’s
 15 assertion of the obligations arising out of Plaintiff’s contract with Imagem’s
 16 predecessor, ABACO Productions, Inc., solely against Defendant Imagem, the legal
 17 owner of the copyrighted music in which Plaintiff holds a beneficial interest.
 18 Plaintiff alleges that Defendant Imagem breached its obligation to protect the
 19 copyrighted music for which it is the legal owner, and did so in a way that could
 20 permit Plaintiff’s copyrighted Composition to be infringed by others, thus depriving
 21 Plaintiff of his right to royalties. *See, e.g., Cortner v. Israel*, 732 F.2d 267, 272 (2d
 22 Cir. 1984) , citing with approval *Manning v. Miller Music Co.*, 174 F. Supp. 192,
 23 195-97 S.D.N.Y. 1959), and *Hoffman v. Santley-Joy, Inc.*, 51 F. Supp. 778. 778-779
 24 (S.D.N.Y. 1943). (“Otherwise the beneficial owner’s interest in the copyright could
 25 be diluted or lessened by a wrongdoer’s infringement.” *Cortner*, 732 F. 2d at 272.)
 26
 27
 28

II.

JURISDICTION AND VENUE

2. The first and second claims for relief of this First Amended Complaint is filed and instituted under the Copyright Act, 17 U.S.C. §101, *et seq.* to recover damages, and injunctive and declaratory relief against all of the above-named Defendants, except for Imagem for their past and continuing violations. The third claim for relief seeks damages and injunctive relief under Sections 39 and 43(a) of the Lanham Act, 15 U.S.C. §§ 1121 and 1125(a). This Court has jurisdiction over these claims arising under federal law pursuant to 28 U.S.C. § 1331.

3. This Court has original and exclusive jurisdiction over the subject matter of this civil action under the Copyright Act 17 U.S.C. §§ 411 and 501, and 15 U.S.C. § 1125(a). Pursuant to 28 U.S.C. § 1367, the Court has supplemental jurisdiction over the substantially related state law breach of contract claim that forms part of the same case or controversy. Defendants transact business on a systematic and continuous basis within this District and may be found here within the meaning of 28 U.S.C. §1391(b) and §1400. Further, many of the infringing and unlawful acts were performed and occurred within this District.

III.

THE PARTIES

4. Plaintiff Richard Friedman, an individual, is a resident of the City and County of Los Angeles, California.

5. Plaintiff is informed and believes and thereon alleges that Defendant Hans Zimmer, is an individual, and is also doing business as Remote Control Songs (hereinafter, collectively, “Zimmer”), and is a resident of the County of Los Angeles, California.

6. Plaintiff is informed and believes and thereon alleges that Defendant Twentieth Century Fox Film Corporation (hereinafter “Fox”) is a Delaware

1 corporation, qualified to do business in California, having a place of business at
2 10201 West Pico Boulevard, Los Angeles, California.

3 7. Plaintiff is informed and believes and thereon alleges that Defendant
4 Fox Searchlight Pictures, Inc. (hereinafter “Searchlight”) is a Delaware corporation,
5 qualified to do business in California, and having a principal place of business at
6 10201 West Pico Boulevard, Los Angeles, California.

7 8. Plaintiff is informed and believes and thereon alleges that Defendant
8 Fox Entertainment Group, Inc. (hereinafter “FEG”) is a Delaware corporation,
9 qualified to do business in California, and having a principal place of business at
10 10201 West Pico Boulevard, City of Los Angeles, State of California.

11 9. Plaintiff is informed and believes and thereon alleges that Defendant
12 New Regency Productions, Inc. (hereinafter “New Regency”) is a California
13 corporation, having a principal place of business at 1801 Century Park West, Los
14 Angeles, California.

15 10. Plaintiff is informed and believes and thereon alleges that Defendant
16 Monarchy Enterprises S.a.r.L. (hereinafter, collectively, “Monarchy”) is a
17 Luxembourg corporation, not qualified to do business in California, but it is doing
18 business at 1801 Century Park West, Los Angeles, California, under the trade name
19 Regency Enterprises.

20 11. Plaintiff is informed and believes and thereon alleges that Defendant
21 River Road Entertainment, LLC (hereinafter “River Road”) is a Minnesota
22 corporation qualified to do business in California, and having a principal place of
23 business at 2000 Avenue of the Stars, Suite 620, Los Angeles, California.

24 12. Plaintiff is informed and believes and thereon alleges that Defendant
25 Plan B Entertainment, Inc. (hereinafter “Plan B”) is a California corporation, having
26 a principal place of business at 10201 West Pico Boulevard, Los Angeles,
27 California.
28

13. Plaintiff is informed and believes and thereon alleges that Defendant Remote Control Productions, Inc., is a California corporation, with its principal place of business at 1547 14th Street, Santa Monica, California, 90404.

14. Plaintiff is informed and believes and thereon alleges that Defendant Sony Music Entertainment (hereinafter “Sony”) is a Delaware general partnership, having a principal place of business at 9830 Wilshire Boulevard, Beverly Hills, California.

15. Defendant Imagem Production Music LLC (“Imagem”), is a New York corporation, not qualified to do business in California, but doing business in California as 5 Alarm Music, and also doing business in California as Cypress Creek Music, at 44 West Green Street, Pasadena, California. Plaintiff is informed and believes, and thereon alleges that Imagem is the successor-in-interest to ABACO Productions, Inc. (“ABACO”), the original copyright claimant to *To Our Fallen*. Imagem, the legal owner of the copyright, has refused, after demand, to sue the other Defendants.

16. Plaintiff does not know the true names of Defendants designated as Does 1 through 50, inclusive, and therefore sues them by said fictitious names. Plaintiff is informed and believes that said fictitiously named Defendants are responsible in some manner for Plaintiff’s damage herein, and will amend this complaint to allege their true names when ascertained. Plaintiff is informed and believes, and thereon alleges that, in doing the acts herein alleged, each Defendant was the agent, employee, co-conspirator and/or attorney for each co-defendant, and each was acting within the scope of said agency, employment and/or conspiracy.

IV.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

Copyright Infringement

(Against All Defendants Except SME and Imagem)

1 17. Plaintiff incorporates paragraphs 1 through 16 herein, as if fully set
2 forth.

3 18. In or about 2004, Plaintiff wrote and composed a musical composition
4 entitled *To Our Fallen* (hereinafter referred to as “the Composition”).

5 19. In or about March 4, 2004, Plaintiff and ABACO, a commercial music
6 library, entered into a written agreement by which Plaintiff assigned the legal
7 ownership of the Composition to ABACO, but retained a beneficial interest in the
8 copyright.

9 20. In or about May, 2004, ABACO caused to be recorded a derivative
10 work of the Composition which was included in a recorded music sampler entitled
11 *American Heart*, containing the Composition and additional compositions by
12 Plaintiff, as well as other compositions by a second composer. That sound
13 recording was widely distributed in or about 2004, and, thus, (i) the Composition
14 and (ii) the sound recording of *To Our Fallen* contained therein (hereinafter referred
15 to as the “Sound Recording”) were published at that time.

16 21. In 2006, ABACO, applied for and was issued by the Register of
17 Copyrights a Certificate of Registration of a Claim to Copyright in and to the
18 Composition and the Sound Recording, No. SR 392-592. Plaintiff is the beneficial
19 owner of the Composition and the Sound Recording.

20 22. The Composition and the Sound Recording were embodied in the
21 episode of the television show *Desperate Housewives* entitled “The Juiciest Bites—
22 In Memoriam,” aired on the ABC Television Network in April, 2008, and October,
23 2009. Plaintiff is informed and thereon alleges that the string overdub portions of
24 the music for “The Juiciest Bites—In Memoriam” was recorded at Remote Control
25 Productions, a recording facility owned in whole or in part by Defendant Hans
26 Zimmer, as was all or most of the musical score for *12YAS*. The foregoing is
27 compelling evidence of access by Defendants to the Composition.
28

1 23. In or about 2013, Defendants produced and distributed the motion
2 picture *I2YAS* in the United States and throughout the world. *I2YAS* reproduced
3 and embodied musical compositions and cues ostensibly composed by Defendant
4 Zimmer, including, *inter alia*, the main musical theme entitled *Solomon Northup*.
5 Later in 2013, *I2YAS* received widespread critical acclaim, and was named the best
6 film of 2013 by several media outlets. The film was awarded the Golden Globe
7 Award for the Best Motion Picture—Drama, the British Academy of Film and
8 Television Arts (“BAFTA”) recognized it with the Best Film Award, and it went on
9 to win the Academy of Motion Picture Arts and Sciences Best Picture of the Year
10 “Oscar.” Zimmer was nominated for the Golden Globe award for the best musical
11 score of 2013 for *I2YAS*, his purported creation. *I2YAS* has generated substantial
12 worldwide profits for all of the Defendants.

13 24. Notably, (a) the main theme, *Solomon Northup*, (b) the music for the
14 closing credits, and (c) eleven of the other musical cues embodied in *I2YAS* are
15 based upon, and substantially similar to, the Composition and infringe Plaintiff’s
16 rights in and to the Composition., but neither Plaintiff, nor any other person or entity
17 in privity with Plaintiff, has been asked by Defendants, at any time, for permission
18 to use or license Plaintiff’s Composition in *I2YAS*.

19 25. Plaintiff is informed and believes that Defendant Hans Zimmer claims
20 that he owns and/or controls all of the musical score and cues embodied in *I2YAS*,
21 and based on Zimmer’s false claims, the other Defendants, erroneously, and in
22 violation of the moral rights of Plaintiff pursuant to the copyright laws of the
23 numerous foreign nations where the motion picture and the phonorecord of *I2YAS*
24 have been distributed and exhibited, have credited Defendant Zimmer, rather than
25 Plaintiff, as the composer of the Composition.

26 26. The foregoing conduct of Defendants, in copying protected elements of
27 Plaintiff’s works, is without any authorization or license from Plaintiff, and,
28 therefore, constitutes copyright infringement of the Composition. Plaintiff seeks, as

1 damages, appropriate amounts to be determined at trial, according to 17 U.S.C.
2 §501, *et seq.*, from each of the Defendants named herein for each such infringement.
3 Pursuant to 17 U.S.C. §504, Plaintiff is entitled to recover the actual damages
4 suffered as a result of the infringement, and any profits of the Defendants that are
5 attributable to the infringement, or, at Plaintiff's election, for statutory damages.

6 27. Defendants' infringing conduct has also caused and is causing
7 substantial and irreparable injury and damage to Plaintiff in an amount not capable
8 of determination, and, unless restrained, will cause further irreparable injury, leaving
9 plaintiff with no adequate remedy at law. Plaintiff accordingly requests injunctive
10 relief pursuant to 17 U.S.C. §502.

11 **SECOND CLAIM FOR RELIEF**

12 **(Copyright Infringement)**

13 **(Against Defendant SME)**

14 28. Plaintiff incorporates paragraphs 1 through 27 herein, as if fully set
15 forth.

16 29. Plaintiff is informed and believes and thereon alleges that the musical
17 score for *12YAS*, including material portions of Plaintiff's Composition were
18 reproduced and distributed on phonorecords by Defendant Sony Music
19 Entertainment ("SME") through its division, Columbia Records. Plaintiff is
20 informed and believes, and thereon alleges, that SME licensed, and distributed
21 throughout the United States and many countries of the world, and sold many
22 hundreds of thousands of copies of the phonorecord embodying the "soundtrack"
23 music from *12YAS*, which includes the Composition.

24 30. The foregoing conduct of Defendant SME and the other Defendants is
25 without any authorization or license from Plaintiff, and, therefore, constitutes
26 copyright infringement as to the Composition. Plaintiff seeks, as damages,
27 appropriate amounts to be determined at trial according to 17 U.S.C. §501, *et seq.*,
28 from defendant SME, and the other Defendants for their infringement. Pursuant to

17 U.S.C. §504, Plaintiff is entitled to recover the actual damages suffered as a result of the infringement of the Composition, and any profits of the Defendants that are attributable to the infringement, or, at Plaintiff's election, for statutory damages.

31. Defendants' infringing conduct has also caused and is causing substantial and irreparable injury and damage to Plaintiff in an amount not capable of determination, and, unless restrained, will cause further irreparable injury, leaving Plaintiff with no adequate remedy at law. Plaintiff accordingly requests injunctive relief pursuant to 17 U.S.C. §502.

THIRD CLAIM FOR RELIEF

(For Violation of Section 43(A) of the Lanham Act (15 U.S.C. § 1125(a))

(Unfair Competition and Misrepresentation

Against All Defendants Except Imagem)

32. Plaintiff incorporates paragraphs 1 through 31 herein, as if fully set forth.

33. Section 43(a) of the Lanham Act (15 U.S.C. § 1125(a)) prohibits a competitor from engaging in commercial advertising, marketing, or promotion that "misrepresents the nature, characteristics, qualities, or geographic origin of" its own or a competitor's "goods, services, or commercial activities." The Lanham Act also prohibits a competitor from making "any false designation of origin, false or misleading description of fact or false or misleading representation of fact which . . . is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, association . . . as to the origin, sponsorship, or approval of" its own "goods, services, or commercial activities." (15 U.S.C. § 1125(a))

34. The Lanham Act is intended to provide protection against a myriad of false, misleading, and deceptive commercial practices. It was enacted to protect against unfair competition. One of the Lanham Act's main purposes is to prevent a competitor from misleading the public by placing their competitor's work forward as its own. It is a remedial statute that is to be broadly applied and construed so as

1 to effectuate its remedial purpose. §43(a)(1)(B) of the Lanham Act, (15 U.S.C.
2 §1125(a)(1)(B)), specifically prohibits the use of false descriptions and false
3 designations of origin when advertising or promoting goods or services in
4 commerce. Liability under § 43(a) may arise for a false description or
5 representation even though no trademark is involved.

6 35. Pursuant to § 43(a)(1)(B) of the Lanham Act Defendants have
7 misrepresented the nature, characteristics and the qualities of Defendant Zimmer's
8 services. The acts and activities by Defendants and those acting in concert with
9 them as set forth above, constitute unfair competition with Plaintiff

10 36. Within the relevant time period and up through the filing of this action,
11 and on a continuing basis, Defendants, have exhibited, distributed, advertised, and
12 promoted the movie *12YAS*, which Plaintiff alleges infringes on his Composition
13 throughout the United States and the rest of the world. Defendants, and in their
14 advertisements and promotional materials, have falsely credited and represented that
15 (a) the main theme from *12YAS*, Solomon Northup, and (b) twelve of the other
16 musical cues embodied in *12YAS* is owned and/or controlled by Defendant Zimmer.
17 The applicable misrepresentation in Defendants' advertising and promotional
18 materials reads: "MUSIC BY HANS ZIMMER" rather than "MUSIC BY
19 RICHARD FRIEDMAN."

20 37. Plaintiff, nor any other person or entity in privity with Plaintiff, has
21 authorized or consented to any request by Defendants to use or license Plaintiff's
22 Composition in *12YAS*.

23 38. Defendants knew, or had reason to believe, that these representations in
24 commercial advertising and promotion throughout the United States and numerous
25 foreign nations crediting Defendant Zimmer with ownership of the works in *12YAS*
26 were false or misleading, and were likely to, and did cause a substantial segment of
27 viewers of the film to be deceived, confused, and/or mistaken about the nature,
28 source, characteristics, qualities, and/or origin of the music embodied in *12YAS*.

39. Defendants' actionable and wrongful conduct has caused commercial and competitive injury to Plaintiff. Commercial injury is generally presumed when Plaintiff and Defendant Zimmer, as here, are direct competitors and the defendant's misrepresentations and misattributions have a tendency to mislead.

40. Defendants' false, deceptive, and misleading practices have been disseminated throughout the United States and throughout the world and thus have affected a substantial volume of interstate commerce.

41. By reason of, and as a direct and proximate result, of Defendants' false, deceptive, confusing, and misleading practices and conduct, Plaintiff has suffered, and will continue to suffer, financial injury to its business and property. As a result, Plaintiff has been deprived of revenues and profits it otherwise would have made and sustained a loss of goodwill.

42. Plaintiff has not yet calculated the precise extent of its past damages and cannot now estimate with precision the further damages which continue to accrue, but when Plaintiff does so, it will seek leave of the Court to insert the amount of the damages sustained herein.

FOURTH CLAIM FOR RELIEF FOR COPYRIGHT

(Infringement and Violation of Moral Rights Under the Copyright Law of the Federal Republic of Germany)

(Against All Defendants Except Iagem)

43. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 through 42, inclusive of the First Amended Complaint above, with the same force and effect as though set forth completely herein.

44. At all times herein mentioned, there was in full force and effect in the Federal Republic of Germany the German Copyright Statute of 1965, as amended July 16, 1998, which provides [in its English language translation], in pertinent part:

13. Recognition of Authorship—

The author shall have the right of recognition of his authorship of the work. He can determine whether the work is to bear an author's designation and what designation is to be used.

14. Distortion of the Work—

The author shall have the right to prohibit any distortion or any other mutilation of his work which would prejudice his lawful intellectual or personal interests in the work.

15. General—

The author shall have the exclusive right to exploit his work in material form; the right shall comprise in particular:

1. the right of reproduction (Article 16)
2. the right of distribution (Article 17)
3. the right of broadcast (Article 20).

97. Actions for Injunction and Damages—

As against any person who infringes a copyright or any other right protected by this Law, the injured party may bring an action for injunctive relief requiring the wrongdoer to cease and desist if there is a danger of repetition of the acts of infringement, as well as an action for damages if the infringement was intentional or the result of negligence. In place of damages, the injured party may require surrender of the profits derived by the infringer from the acts of infringement together with detailed accounting reflecting such profits.



Authors, including...performers (Section 73) may, if the infringement was intentional or the result of negligence, recover, as justice may require, a monetary indemnity for the injury caused to them even if no pecuniary loss has occurred.

45. Plaintiff requests that the Court take notice of the German Copyright Statute and award damages to plaintiffs for copyright infringement as well for the violation of Plaintiff's moral rights under the German Copyright Act.

FIFTH CLAIM FOR RELIEF FOR COPYRIGHT

(Infringement and Violation of Moral Rights

Under the Copyright Law of the Federal Republic of France)

(Against All Defendants Except Imagem)

46. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 through 45, inclusive of the First Amended Complaint above, with the same force and effect as though set forth completely herein.

47. At all times herein mentioned, there was in full force and effect in the Republic of France the Code of Intellectual Property of 1992, as amended October 1, 2010, which provides [in its unofficial English language translation], in pertinent part:

Article L121-1. An author shall enjoy the right to respect for his name, his authorship and his work. This right shall attach to his person. It shall be perpetual, inalienable and imprescriptible.

Article L121-2. The author alone shall have the right to divulge his work. He shall determine the method of disclosure and shall fix the conditions thereof....

Article L122-1. The right of exploitation belonging to the author shall comprise the right of performance and the right of reproduction.

48. Plaintiff requests that the Court take notice of the French Intellectual Property Code and award damages to Plaintiff for copyright infringement as well for the violation of Plaintiff's moral rights under the French Intellectual Property Code.

SIXTH CLAIM FOR RELIEF

(Breach of Trust/Breach of Implied Obligation)

(Against Defendant Imagem)

49. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 through 48 inclusive of the First Amended Complaint above with the same force and effect as though set forth completely herein.

50. As set forth in Paragraph 19, *supra*, in or about March 4, 2004, Plaintiff and ABACO, a commercial music library, entered into a written agreement by which Plaintiff assigned the legal ownership and all exclusive rights of the Composition to ABACO, but retained a beneficial interest in the copyright, *i.e.*, *inter alia*, the payment of certain royalties (the "Contract"). Defendant Imagem, doing business as 5 Alarm Music, is the successor-in-interest to ABACO and assumed the obligations arising out of the ABACO contract with Plaintiff.

51. "When a composer assigns copyright title to a publisher in exchange for the payment of royalties, an equitable trust relationship is established between the two parties which gives the composer standing to sue for infringement of that copyright. *Cortner v. Israel*, 732 F. 2d 267, 271 (2d Cir. 1984) (citing cases with approval, including *Manning v. Miller Music Corp.* 174 F. Supp. 192, 195-97 (S.D.N.Y. 1959)). Otherwise the beneficial owner's interest in the copyright could be diluted or lessened by a wrongdoer's infringement."

52. By virtue of their contractual arrangement, there is a relationship of trust and confidence between Plaintiff and Defendant Imagem. The law implies a promise on Defendant Imagem's part to endeavor to make Plaintiff's copyrighted Composition productive because that is the very purpose of the assignment of

1 literary rights and the correlative obligation to pay royalties. Defendant Imagem is,
2 therefore, obligated to exercise good faith towards Plaintiff and to not take action
3 that dilutes Plaintiff's copyrighted Composition.

4 53. On information and belief, Defendant Imagem has and continues to
5 promote and support musical work of Defendant Zimmer. Additionally, Imagam
6 refused to participate in this action as a co-plaintiff, disclaiming any interest in
7 pursuing this matter or assisting Plaintiff to protect his rights as the beneficial owner
8 of the copyrighted Composition.

9 54. Defendant Imagem has breached its duty of trust and implied obligation
10 to Plaintiff. As a result, Imagem continues to interfere with and injure Plaintiff's
11 ability to receive the fruits of the Contract with ABACO, for which Imagem is the
12 successor-in-interest.

13 55. As a direct and proximate result of Defendant Imagem's breach of trust
14 and implied obligation to protect Plaintiff's Copyright, Plaintiff's property and
15 business has been injured and damage in an amount to be determined at trial.

16 **SEVENTH CLAIM FOR RELIEF**

17 **(Breach of Implied Covenant of Good Faith and Fair Dealing)**

18 **(Against Defendant Imagem)**

19 56. Plaintiff repeats and realleges each and every allegation contained in
20 paragraph 1 through 55 inclusive of the First Amended Complaint above with the
21 same force and effect as though set forth completely herein.

22 57. On or about March 4, 2004, as alleged in Paragraph 19, *supra*, Plaintiff
23 entered into a written contract with ABACO, a commercial music library, by which
24 Plaintiff assigned the legal ownership of the Composition to ABACO, but retained a
25 beneficial interest in the copyright. ABACO was acquired and/or purchased by
26 Defendant Imagem sometime thereafter and assumed ABACO's obligations under
27 the contract with Plaintiff.
28

1 58. Implied in the contract with ABACO was a covenant of good faith and
 2 fair dealing that ABACO would not do anything deliberately to deprive Plaintiff of
 3 the benefits flowing from the contract with ABACO. Notwithstanding Defendant
 4 Imagem's equitable obligations to Plaintiff, as set forth by the *Cortner* Court in the
 5 previous Claim for Relief, when asked by Plaintiff to join as a co-plaintiff in this
 6 action, Defendant Imagem, in a letter to Plaintiff dated March 17, 2015 (the
 7 "Letter") refused to do so. Although Plaintiff's preliminary musicologist report by
 8 James DiPasquale (the "Report") in which he expressed his expert opinion of
 9 "striking similarities" between of Plaintiff's copyrighted Composition, *To Our*
 10 *Fallen*, and the music used by Defendants in *12YAS* was shared with Defendant
 11 Imagem on or about January 31, 2015, over six weeks had elapsed since Defendant
 12 Imagem had been provided with the Report, but nevertheless Defendant Imagem
 13 advised that it "would need to have its own musicologist analyze the works in order
 14 to reach a conclusion on that issue." Plaintiff believes and thereon alleges hereon
 15 that Defendant Imagem's failure to do so during the intervening six week period is
 16 evidence of an implied breach of the Contract by Defendant Imagem.

17 59. Then, (i) without undertaking its own investigation of the facts
 18 underlying Plaintiff's Complaint (in which Defendant Imagem had been asked by
 19 Plaintiff to participate as a co-plaintiff as early as October, 2014), and (ii) in light of
 20 the mandate of Rule 19(a) Fed. R. Civ. P. specifying: "A person who is subject to
 21 service of process and whose joinder will not deprive the court of subject-matter
 22 jurisdiction must be joined as a party if...(B) that person claims an interest relating
 23 to the subject of the action and is so situated that disposing of the action in the
 24 person's absence may:... (ii) leave an existing party of incurring double, multiple, or
 25 otherwise inconsistent obligations because of the interest," Defendant Imagem, in
 26 further evidence of its breach of implied faith and fair dealing of the ABACO
 27 contract for which it assumed ABACO's obligations, stated in the Letter: (a) "5
 28 Alarm has repeatedly disclaimed any interest in pursuing this matter and would

1 agree not to sue Defendants, eliminating any possibility of further litigation based
 2 on the claims at issue here” and (b) “If Mr. Friedman were to recover damages from
 3 Defendants, 5 Alarm’s proper redress would be from *Mr. Friedman* [emphasis in
 4 original] not Defendants.” “ It has been held that in every contract whereby rights
 5 under a copyright are transferred or licensed, ‘there is an implied covenant that
 6 neither party shall do anything which will have the effect of destroying or injuring
 7 the right of the other party to receive the fruits of the contract, which means that in
 8 every contract there exists an implied covenant of good faith and fair
 9 dealing....Whenever the grantor reserves any rights in the work, there is, absent a
 10 clearly express intent to the contrary, an implied covenant, by the grantee, that he
 11 will, in the course of exercising his rights under the grant, protect the rights reserved
 12 to the grantor by taking whatever steps are necessary to preserve the copyright in the
 13 work.” 3 NIMMER, COPYRIGHT § 10.11[A],[B].

14 60. By means of Defendant Imagem’s breaches of trusts described herein,
 15 Imagem has intentionally and unjustifiably injured, and continues to interfere with
 16 and injure, Plaintiff’s ability to receive the fruits of the Contract. with ABACO,
 17 which Imagem is the successor-in-interest.

18 61. As a direct and proximate result of Defendant Imagem’s breach of the
 19 covenant of good faith and fair dealing with respect to its assumption of the
 20 ABACO contract, Plaintiff’s property and business has been injured and damaged in
 21 an amount to be determined at trial.

22 V.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff prays for judgment as follows:

25 1. On the First and Second Claims for Relief, for actual damages and
 26 profits, according to proof, or, in the alternative, for statutory damages, based upon
 27 17 U.S.C. §504;

28 2. On the Second Claim for Relief, for damages according to proof;

1 3. On the Third Claim for Relief, for damages according to proof;

2 4. On the Third Claim for Relief, for treble damages, pursuant to 15
3 U.S.C. §1117(a), according to proof;

4 5. On the Fourth and Fifth Claims for Relief that each Defendant be
5 required to pay to Plaintiff such damages and profits as provided by the German
6 Copyright Statute of 1965 and the French Intellectual Property Code of 1992, as
7 amended October 1, 2010, for each separate infringement of Plaintiff's
8 Composition;

9 6. On the First, Second, Third, Fourth, and Fifth Claims for Relief, that
10 each of the Defendants, and each of them, their officers, agents, servants, employees
11 and all persons, firms, corporations, and associations in active concert or
12 participation with them, be enjoined during the pendency of this action and
13 permanently from:

14 (a) Producing, exhibition, publicly displaying, licensing, manufacturing,
15 distributing, selling, or in any way using or transferring the copyrighted portions of
16 the Works and that all videograms and phonorecords embodying the copyrighted
17 portions of the Works be delivered up and destroyed as the Court shall direct
18 pursuant to 17 U.S.C. § 503 and 15 U.S.C. § 1118; and

19 (b) Issuing any advertising or promotional material, making public
20 statements or otherwise representing that any portion of the Composition will be in
21 any manner be associated with, authorized by, or sponsored by Defendant Zimmer;
22 and

23 7. On the Sixth and Seventh Claims for Relief, for (i) actual damages
24 according to proof for Defendant Iagem's material breach of contract and (ii) a
25 declaratory judgment that based on Defendant Iagem's material breach of trust,
26 that the legal ownership in and to copyright in the Composition be returned to
27 Plaintiff by reassignment by Defendant Iagem to Plaintiff, and that the
28 copyrighted Composition be revested in Plaintiff;

1 8. For a declaratory judgment that Plaintiff is the legal owner of (a)
2 *Solomon Northup*, and (b) all other twelve musical cues embodied in the videograms
3 and phonorecords of *12YAS*, and that all thirteen (13) of these musical compositions
4 are based on *To Our Fallen*;

5 9. An award of costs and reasonable attorneys' fees pursuant to 17 U.S.C.
6 § 505 and 15 U.S.C. § 1117(a);

7 10. An award of pre-judgment and post judgment interest against all
8 Defendants ; and

9 11. For any further relief the Court should deem just and proper.
10

11 Dated: March 23, 2015

BLECHER COLLINS PEPPERMAN & JOYE, P.C.
MAXWELL M. BLECHER
DONALD R. PEPPERMAN
JENNIFER S. ELKAYAM

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15 By: /s/ Maxwell M. Blecher

Maxwell M. Blecher
Attorneys for Plaintiff
RICHARD FRIEDMAN

16
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18
19 Dated: March 23, 2015

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22 By: /s/ Jeffrey L. Graubart

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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial as provided for pursuant to Fed. R. Civ. P. 38, and Local Rule 38-1.

Dated: March 23, 2015

BLECHER COLLINS PEPPERMAN & JOYE, P.C.
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